IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2647 OF 2007

Amarjit R. Sharma .. Applicant

versus

State of Maharashtra .. Respondent

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Mr.R.D. Suryawanshi for the applicant.

Mr.U.V. Nikam, APP for the State.

CORAM : D.G.KARNIK, J

DATED : 28th November 2007

P.C.:

1. Heard learned counsel for the applicant and learned APP for the State.

2. By this application under section 439 of the Code of criminal Procedure, the applicant prays for bail. The applicant is accused no.4 in Sessions Case no.24 of 2007 pending before the Addl. sessions Judge, Kalyan. A charge-sheet has been filed against all accused on 2nd January 2007 for offences punishable under section 302 and 201 r/w sec. 34 of the IPC.

3. The facts in brief are that on 21st August 2005 at 10.10 a.m, police received an information that a dead body was lying on the way passing through Walivali village within the jurisdiction of Badlapur police station. The police went to the site and found a dead body of an unidentified person. The police noticed also found that there were several injuries on his person and concluded that it was a case of murder. Accordingly, C.R. No.I-89 of 2005 was registered against unknown accused. After investigation, it was revealed that the body was of one Ghanshyam Vamdev Ketaria (hereinafter referred to as 'the deceased'). During the course of investigation, statement of Ramam Narayan Pal was recorded by the police on 9th December 2006. In his statement, Raman Narayan Pal stated that there was a love affair between Pushpa and the deceased. Accused no.1 was opposed to the marriage and he had previously threatened the deceased. Ram Narayan Pal has further stated that on the Raksha Bandhan day in the year 2005, he along with the accused nos.1, 2 and 3 and the deceased were travelling in a rickshaw tempo. On their way they consumed liquor and started further travel. The rickshaw tempo was stopped by the accused no.1. There the decease was brought down where he was murdered. He stated that the rickshaw

driver (who is the accused no.4 and applicant herein) strangulated the deceased with a wire and the other accused persons assaulted the deceased with a scissor. In the said statement, Raman Narayan Pal has not mentioned the name of applicant rickshaw driver nor has he stated that he would be able to identify the rickshaw driver. However, in the subsequent statement dated 22nd December 2006, he stated that when he was shown accused no.4 he identified him as the rickshaw driver. On the basis of their second statement of Raman Narayan Pal the applicant is made the accused no.4.

4. It may be noted that the statement of Raman Narayan Pal was recorded about 18 months after the incident. In the first statement dated 9th December 2006, he did not mention the name of the rickshaw driver nor did he mention that he would identify the rickshaw driver-the accused no.4 For the first time, he is alleged to have identified the rickshaw driver on 22nd December 2006. No identification parade was held.

5. Though it is alleged that it was stated by Raman Narayan Pal that rickshaw driver had strangulated the deceased with a wire, no strangulation marks were found in the post mortem

report.

6. The investigation is complete. The charge-sheet has been filed. There is no allegation that accused no.4 is likely to tamper with the evidence or any of the the witnesses. The applicant is in jail since 22nd December 2006. The trial is not likely to commence soon. Taking an overall view, I am of the view that the applicant is entitled to be released on bail subject to certain conditions.

7. The applicant is released on bail subject to furnishing personal bond in the sum of Rs.50,000/- with one or two sureties of an aggregate amount of Rs.50,000/- subject to the following conditions:-

i) The applicant shall not make any inducement or threats nor shall in any way contact any of the prosecution witnesses.

ii) The applicant shall not leave the Thane District without prior permission of the Sessions Court.

iii) The applicant shall report to the concerned police station once a month between 1st and 5th day

of British Calendar month.

(D.G. KARNIK,J)